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August 31, 1936

PURCHASES UNDER WHEELER-HOWARD ACT

August 31, 1936.

Memorandum for the Office of Indian Affairs:

The Office of Indian Affairs has submitted several titles for examination covering land in Mississippi being purchased under authority granted by the Wheeler-Howard Act (48 Stat. 984). Several opinions have been rendered and in one case the deed has been recorded and accepted. In every case submitted, the deed designates the grantee as the United States in trust for the Choctaw Tribe of Mississippi.

A further examination reveals that this designation is incorrect because there is in fact no existing tribe of Indians in Mississippi known as the Choctaw Tribe. The Choctaw tribe or nation of Indians, formerly of Mississippi, removed to Oklahoma and became one of the Five Civilized Tribes. Certain members of the tribe remained in Mississippi, taking allotments there and becoming citizens of the State, in accordance with the Dancing Rabbit Creek Treaty concluded September 27, 1830 (7 Stat. 333). Thereafter, when Oklahoma lands were allotted, some of the Indians remaining in Mississippi were permitted to enroll as citizens of the Choctaw nation in Oklahoma provided they remained, already citizens of Mississippi, thereby severed their relations with the Choctaw tribe. They therefore cannot now be regarded as a tribe.

The Wheeler-Howard Act, however, authorizes the purchase of land for Indians and defines the term "Indian" to include those persons of one-half or more Indian blood regardless of membership in a recognized Indian tribe under Federal jurisdiction and regardless of residence on an Indian reservation. (Sec. 19 of the act of June 18, 1934, *supra*.) In so far as the Indians in Mississippi fall within this definition as to degree of blood, purchases may be made for their benefit. Moreover, these Indians may be organized under the provisions of the Wheeler-Howard Act after land has been acquired for them. Therefore, I suggest that the titles now being acquired be taken as follows:

"The United States in trust for such Choctaw Indians of one-half or more Indian blood, resident in Mississippi, as shall be designated by the Secretary of the Interior, until such time as the Choctaw Indians of Mississippi shall be organized as an Indian tribe pursuant to the act of June 18, 1934 (48 Stat. 984), and then in trust for such organized tribe."

Several titles have already been examined, as I noted above, and no objection was made to the designation of the grantee there employed. In all of those cases where the title papers have already been returned to the field, instructions should be given to the field agents to have the deeds corrected before they are recorded. In that case where the deed has already been recorded and accepted, it will be necessary to secure a new deed. The necessary corrections will be made in the other cases which are now pending in this office.

The error discussed herein arises perhaps out of unusual circumstances, but is one that might have been avoided. I suggest that further difficulties of this kind can be reduced or eliminated by having the Indian Organization Unit of your office formally approve the designation of the grantee in each project undertaken. This formal approval should be recited in each title case submitted for my examination.

NATHAN R. MARGOLD,
Solicitor.

ISLETA AND SANTO DOMINGO PUEBLOS—
RIGHTS-OF-WAY

September 2, 1936.

*Memorandum for the Commissioner
of Indian Affairs:*

I am returning for further consideration your letters of July 28 and August 26, dealing with grants of rights of way over lands of the Isleta and Santo Domingo Pueblos in New Mexico to the A. T. & S. F. Railway Company and the Postal Telegraph-Cable Company.

While I agree with your conclusion that these grants may be made under authority of the acts of Congress cited in your letters I do not agree with the statement that the agreements entered into between the respective pueblos and the companies named above, are in violation of the restrictive provisions contained in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The restrictive provisions to which you refer are contained in section 4 of the Reorganization Act and declare, with exceptions not here material, that "No sale, devise, gift, exchange or other transfer of restricted Indian lands * * * shall be made or approved." The right conveyed by these right of way grants is in interest in land and if the conveyance of such